IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.302 of 2002

(Against the judgment and order dated 25th January 2002 passed by the learned Sessions Judge, Begusarai in Cr. Appeal No. 10 of 2001)

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1. Satya Narayan Prasad Sinha son of late Nand Kishore Prasad.
2. Bachhi Devi wife of Satya Narayan Pd. Sinha.
3. Krishna Murari Sinha.
4. Krishna Kanhaiya Kumar Sinha.
5. Krishna Gopal Sinha all sons of Satya Narayan Prasad Sinha.

All residents of Jeetwarpur Railway Colony, Qr. No. 166B Samastipur, P.S. and Dist. Samastipur.

.... Petitioner/s

Versus

1. State Of Bihar
2. Sushila Devi daughter of Late Ram Chandra Prasad, resident of village Ajhaur, P.S. Neema Chandpura, District Begusarai.

.... Opposite Party/s

with

Criminal Revision No. 354 of 2002

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Krishna Kumar Sinha son of Satya Narayan Prasad Sinha, resident of Jeetwarpur Rail Colony Qr. No. 166B, Samastipur, P.S. and District- Samastipur.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sushila Devi daughter of Late Ram Chandra Prasad, resident of village- Ajhaur, P.S. Neema Chandpura, District- Bugusarai.

.... Opposite party/s

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Appearance :
(In CR. REV. No. 302 of 2002)
(In CR. REV. No. 354 of 2002)

For the Petitioner/s : Mr. Pramod Manbash, Adv.

For the Opposite Party/s : Mr. Vijay Kr @ VKS Singh,

Adv.
: Mrs. Indu Bala Pandey, APP.

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CORAM: HONOURABLE MR. JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AMARESH KUMAR LAL)

Amaresh Kumar Lal, J. Cr. Revision No. 302 of 2002 and Cr. Revision No. 354 of 2002 arise out of judgment and order dated 25th January 2002 passed by the learned Sessions Judge, Begusarai in Cr. Appeal No. 10 of 2001 by which the appeal has been dismissed with modification in the sentences to the effect that in case of default of payment of fine on the part of the appellants, instead of rigorous imprisonment for a period of one month each, they shall undergo simple imprisonment for a period of one month, as such both these revision applications have been heard together and are being disposed of by this common judgment.

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2. Cr. Revision No. 302 of 2002 has been filed by the relatives of the husband of the complainant, whereas, Cr. Revision No. 354 of 2002 has been filed by the husband of the complainant, opposite party no. 2 in both the revision applications.

3. The prosecution case, in brief,

is that the complainant-opposite party no. 2 was married to Krishna Kumar Sinha, the petitioner in Cr. Revision No. 354 of 2002 on 12.6.1987 according to 'Vaidik' rituals. During the course of marriage, the mother and the brother of the complainant presented 10 'Bhar' gold ornaments, 20 'Bhar' silver ornaments and several utensils to the petitioners but in spite of that the petitioners started demanding Rs.25000/- and a scooter. She was subjected to various types of torture for the fulfillment of the demand. She went to her matrimonial home after marriage and returned to her Naihar after a period of 9 days. She again went to her Sasural Jitwarpur Railway Colony within the town and police station of Samastipur on the eve of Dashahara and stayed there for three months. During the period of 1988-89, she remained in her sasural for a period of about nine months. During this period, the petitioners always abused and assaulted her for dowry. They also threatened to kill her if their demands are not fulfilled. In the month of Aasin, 1989, she returned to her Naihar with her brother. In the meantime, in the year 1988 the husband and

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mother-in-law of the complainant wrote a letter to the mother of the complainant with threatening and the demand of motor-cycle was exactly repeated. On 28.1.1990 the father-in-law of the complainant sent a letter to the complainant through Krishna Murari Sinha, Debar that her mother-in-law was seriously ill and had been admitted in the railway hospital and asked her to come there for looking after her. She immediately went to Samastipur with her Dewar and rendered the services to her mother-in-law. The mother-in-law became perfectly well, thereafter, the petitioners again started assaulting and torturing the complainant. After 6-7 months, the complainant was ousted from her matrimonial home. She returned to her mother's home alone. It has further been alleged that she was not directed to take her ornaments and cloths. The relatives of Naihar of the complainant tried to make the petitioners understand but in vain. Immediately before filing the complaint petition the complainant came to know that her husband, petitioner of Cr. Revision No. 354 of 2002 has eloped with a married girl. The complainant suffered mental agony and in her

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helplessness and inhuman behaviour of the petitioners drove her to commit suicide, she has to file the petition of complaint. The complainant is living with her mother and brother and has also lost her mental balance. She filed complaint case no. 406 C of 1994 in the Court of learned Chief Judicial Magistrate, Begusarai on 8.6.1994.

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4. After taking the statement of the complainant on solemn affirmation, the case was transferred to the Court of SDJM. After enquiry, the petitioners were summoned. Later on, after trial the husband-accused has been convicted under Section 498 A IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- and in default of payment thereof he has further been directed to undergo rigorous imprisonment for a period of one month. The other petitioners have also been convicted for the offence punishable under Section 498 A IPC and sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.200/- each and in default of payment thereof to undergo rigorous imprisonment for a period of one month each.

Thereafter, the accused- petitioners preferred Cr. Appeal No. 10 of 2001 in the Court of learned Sessions Judge. After hearing both the parties, the appeal has been dismissed with modification in the sentence that in case of default in paying fine they would undergo simple imprisonment for one month and the other sentences remained unaltered and were confirmed. Thereafter, all the accused except the husband of the complainant have filed Cr. Revision No. 302 of 2002 and the husband-accused has filed Cr. Revision No. 354 of 2002 as aforesaid.

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5. Heard learned counsel for the petitioners and learned counsel for opposite party no.2.

6. The learned counsel for the petitioners has assailed the impugned judgment and order on three grounds, namely, territorial jurisdiction, limitation and cruelty.

7. It has been submitted that according to the complaint case, the complainant was tortured by the petitioners for fulfillment of their demand of dowry of Rs.25000/- and a scooter and later on the

demand was made for money and motor -cycle. According to complaint petition, the complainant went to her sasural at Samastipur with the petitioner, Krishna Murari Sinha in pursuance to letter dated 28.1.1990 to look after her mother-in-law. She went there and looked after her mother-in-law and when she recovered, all the accused again tortured her. She remained in her Sasural and after 6-7 months she was ousted from her matrimonial home meaning thereby she returned to her mother's house in the year 1990 itself, whereas, the complaint- petition has been filed on 8.6.1994 after a period of three years as such the learned Magistrate should not have taken cognizance as the period of limitation has expired and secondly on the ground that the complaint case has been filed in the Session Division at Begusarai, whereas, the occurrence has taken place in the session division of Samastipur. In support of his contention he has referred to the decision of Supreme Court in the case of ***Rajiv Modi vs. Sanjay Jain & Ors***, reported in ***[2009] ACR 715*** in which it has been held that cause of action is a fundamental element to confer

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jurisdiction upon any Court and which has to be proved by plaintiff to support his right to a judgment of the Court. To constitute territorial jurisdiction, whole or a part of cause of action must have arisen within territorial jurisdiction of Court and same must be decided on basis of averments made in complaint without embarking upon an enquiry as to correctness or otherwise of said facts. If Court is prima facie of opinion that whole or a part of cause of action has arisen in its jurisdiction, it can certainly take cognizance of complaint. There is no need to ascertain that allegations made are true in fact.

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8. Learned counsel for the petitioners has further submitted that even if the cognizance has been taken after the period of limitation, the learned Magistrate should have applied its mind and should have condoned the delay but in this case the delay has not been condoned under Section 478 Cr.P.C. and on this ground also the cognizance and the proceeding are not in accordance with law. In support of his contention, he has relied upon a decision of Supreme Court in the case of ***Sanapareddy Maheedhar and Anr. Vs. State of***

Andhra Pradesh & Anr., reported in ***[2008] ACR 405*** in which it has been held that while considering the applicability of Section 468 to the complaints made by the victims of matrimonial offences, the Court can invoke Section 473 and can take cognizance of an offence after expiry of the period of limitation keeping in view the nature of allegations, the time taken by the police in investigation and the fact that the offence of cruelty is a continuing offence and affects the society at large. To put it differently, in cases involving matrimonial offences the Court should not adopt a narrow and pedantic approach and should, in the interest of justice, liberally exercise power under Section 473 for extending period of limitation.

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9. Learned appellate court has dealt with the point of limitation in paragraph 19 of its judgment which reads as follows:-

> *"19. ….. It appears from the petition of complaint that some days before filing of the complaint petition, the complainant came to know that her husband eloped with a married lady. She has also stated about it in her*

deposition, which was the cause of her frustration and which resulted into filing of the petition of complaint by her. In this view of the matter, it cannot be said that the complaint is barred by limitation. Moreover, it has been held in the case of Arun Vyas versus Anita Vyas reported in 2000(1) BBCJ, IV-32 that the bar to taking cognizance after the period of limitation where a wife complaints that she has been subjected to cruelty in terms of section 498 A of the I.P.C, the court may take cognizance of an offence, even after expiry of period of limitation in the interest of justice and Section 473 of the Cr.P.C. should be construed liberally in such a case."

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10. In this case, it has been noticed that the action of torture to the complainant was started by the petitioners in the matrimonial house of the complainant at Samastipur and it continued. The complainant was in hope that the matter would be settled amicably but she lost her hope for amicable settlement between herself and the petitioners at large. The action of the accused husband gave a death blow to her hope and she was given a mental cruelty in the year 1994 when she came to know that her husband eloped with a married lady. Learned trial court has also dealt this matter in its judgment in paragraph

8 and 9. In paragraph 23 of her cross-examination, the complainant has stated that when she came to know that her husband eloped with Manju Singh, wife of Rabindra Singh, son of Sipahi Jee, she has taken shelter of the Court. In this view of the matter, it cannot be said that the occurrence of torture has been within the jurisdiction at Samastipur and no cause of action has arisen at Begusarai where the complaint case was filed. When the petitioner was ousted from her matrimonial home, she took shelter in her mother's hosue at Begusarai in which jurisdiction the complaint case was lodged. Considering the facts and circumstances, the decisions referred to above reported in ***[2009] ACR 715*** and ***[2008] ACR 405*** (supra) do not help the petitioners, rather they are helpful to the complainant.

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11. Learned counsel for the petitioners has submitted that for assailing the judgment now the third ground cruelty has been made. He has submitted that there has been no occurrence of cruelty as defined in Section 498 A IPC there has been no occurrence which could lead the complainant to commit

suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the complainant. In support of his contention he has referred to a decision of the Supreme Court in the case of ***Manju Ram Kalita vs. State of Assam***, reported in ***[2009] ACR 882.***

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12. Learned lower appellate Court has dealt with this mater in paragraph 16 and 18 of its judgment which reads as follows;-

> *"16. …… I find that the complainant has named all the appellants, who had subjected her to torture for their demand of money and scooter. There is specific overtact alleged against the appellant nos. 1 to 4. The learned lower court has rightly taken a lenient view so far the in-laws of the complainant are concerned while awarding sentence to them.*
>
> *18. The learned counsel for the appellants has also submitted that the appellant nos. 2 to 6 are residing separately from the appellant no. 1. I find that there is no such evidence on record. From the different letters proved in this case, it appears that all the appellants are living together at Jitwarpur Railway Colony in the same house."*

13. Learned trial court has also dealt with this matter and has found that the

victim- complainant has also stated that the accused were torturing her and they also asked to sleep her in the bathroom and used to give stale food to eat and torture and lastly immediately before filing of the complaint she came to know that the husband Krishna Kumar Sinha has eloped with a married lady and it gave her mental shock and the cruelty is of such a nature as is likely to drive a women to commit suicide. An Indian married woman does not want that in her life time her husband should marry to another lady or eloped with another lady. Certainly this type of cruelty comes within the definition of Section 498 A IPC. The word 'cruelty' has been dealt with in paragraph 22 of the judgment reported in ***[2009] ACR 882*** (supra) which reads as follows:-

> *"22. "Cruelty" for the purpose of Section 498 A IPC is to be established in the context of Section 498 A IPC as it may be a different from other statutory provisions. It is to be determined /inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at*

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lest in close proximity of time of lodging the complaint. Petty quarrels cannot be terms as 'cruelty' to attract the provisions of Section 498 A IPC. Causing mental torture to the extent that it becomes unbearable may be terms as cruelty."

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14. Considering the facts and circumstances of the case, I find that cruelty has been made to the complainant by the petitioners and the decision reported in ***[2009] ACR 882*** (supra) does not help the petitioners. The petitioners have not been able to make any ground for interference with the impugned judgment and order passed by the learned trial court as well as the learned Appellate Court.

15. Lastly, the learned counsel for the petitioners has submitted that the main allegation is against the husband Krishna Kumar Sinha, petitioner in Cr. Revision No. 354 of 2002 and there is no specific allegation of overtact against the other petitioners. Therefore, the other petitioners may be given the benefit under Section 360 Cr.P.C. The occurrence has also taken place in the year 1990 and more than 20 years have passed and the petitioners have been suffering

from mental agony.

16. Learned counsel for the opposite party no. 2 has submitted that the complainant is still suffering from mental agony and the petitioners have ruined her life and they do not deserve any leniency and their sentence is not fit to be interfered. They do not deserve any leniency under Section 360 Cr.P.C. It has also been submitted that the husband of the complaint is leading conjugal life with another lady, and other petitioners and the complainant is suffering and leading a miserable life due to torture made by the petitioners and she has not still married to any person.

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17. Considering the facts and circumstances and for the aforesaid reasons, I do not find any ground to interfere with the impugned judgment and order of conviction.

18. In the result, both these revision applications are dismissed.

Patna High Court **(Amaresh Kumar Lal, J.)**
Dated 30th of August 2011
N.A.F.R/Kanchan